

No. 06-16572

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**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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In re: GRAND JURY SUBPOENA,
DATED JULY 19, 2006

GREG FRANCIS ANDERSON,

Witness - Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

**GOVERNMENT'S OPPOSITION TO MOTION FOR ORDER RELEASING
APPELLANT FROM CONFINEMENT**

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
DISTRICT COURT NO. CR 06-90292-WHA

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This is a recalcitrant witness appeal under 28 U.S.C. § 1826(b). On September 29, 2006, Anderson filed a motion for an order releasing appellant Greg Anderson from confinement. The United States herein opposes the motion.

On September 28, 2006, this Court affirmed the district court's August 28, 2006 contempt findings and disposed of Anderson's appeal, rejecting five of the six claims made by Anderson as meritless. With respect to the sixth claim, this Court found the record inadequate to make a ruling, and thus remanded that matter to the district court for either a determination of the legality of the paragraph 8 recording or findings from the district court on the issue of whether the questioning of Anderson before the grand jury on August 17, 2006 was

impermissibly based upon information derived, directly or indirectly, from the recording. The Court asked that the district court supplement the record with its findings within one week of its order, or by October 5, 2006.

28 U.S.C. § 1826(b) states in relevant part, “Any appeal from an order of confinement under this section shall be disposed of as soon as practicable, but not later than thirty days from the filing of such appeal.”

This Court’s September 28, 2006 order complies with 28 U.S.C. § 1826(b). Anderson filed his notice of appeal on August 29, 2006. On September 28, 2006, thirty days from the notice of appeal, this Court issued an order affirming the contempt order in all respects, with the exception that further information was required in the record for the Court to fully evaluate Anderson’s claim regarding the paragraph 8 material.

This Court, and the district court, have taken steps to immediately act upon Anderson’s appeal. Far from allowing the appeal to languish, this Court entered a timely ruling and ordered the district court to clarify its findings by Thursday, October 5, 2006. In response, the district court immediately scheduled a hearing for October 3, 2006, and the government immediately filed a declaration demonstrating the impossibility of the taint complained of by Anderson in his appeal. Anderson is thus guaranteed of a speedy resolution to his appeal on or shortly after October 5, 2006. These actions constitute the most immediate

practicable possible response to the Court's order.

Unlike the rapid chain of events in the instant case, the two primary cases cited by Anderson in his request for release, In re Grand Jury Proceedings, 776 F.2d 1099, 1101 (2d Cir. 1985), and Melickian v. United States, 547 F.2d 416, 419-420 (8th Cir. 1977), concerned instances in which an appellate court failed to take any action on a recalcitrant witness appeal within the thirty-day time period. The thirty-day statutory provision was added to 28 U.S.C. § 1826(b) to protect an incarcerated recalcitrant witness from protracted confinement without appellate review. In re Grand Jury Proceedings (GJ 90-2), 946 F.2d 746, 749 n.3 (11th Cir. 1991). Although there is no case law directly on point on the issue, the manner in which this Court "disposed of" Anderson's appeal appears to comport with Congress's intent to protect his rights. In other words, the Court ruled on the substance of Anderson's motion within the thirty-day period as required by 28 U.S.C. § 1826(b), and remanded for the limited and express purpose of allowing the district court the opportunity to clarify its basis for finding that Anderson had no colorable claim to refuse to testify based upon the paragraph 8 material. In all other respects, this Court's September 28, 2006 order affirmed the district court's order.

Whether or not this Court concludes that Anderson must be released pursuant to the terms of the statute, it is still required to decide the remaining issue

“as soon as practicable” after receiving the district court’s supplemental filing. If, however, the Court grants Anderson bail prior to issuing its order, if it ultimately affirms the district court’s confinement order, the government requests that it include in its memorandum decision an order revoking bail.

CONCLUSION

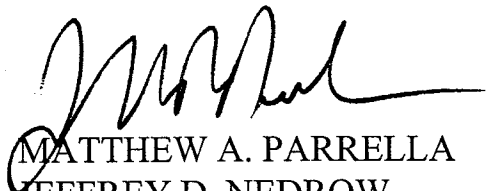
For the foregoing reasons, the United States respectfully requests that Anderson’s motion for an order releasing him from confinement be denied.

Dated: October 3, 2006

Respectfully submitted,

KEVIN V. RYAN
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BARBARA J. VALLIERE
Chief, Appellate Section



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that I directed an envelope and documents containing copies of this **Government's Opposition to Motion for Order Releasing Appellant from Confinement** in the case of **In Re: Grand Jury Subpoena Dated July 19, 2006, Greg Francis Anderson v. United States of America, No. 06-16572** be faxed to Witness-Appellant's counsel:

Mark J. Geragos
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Los Angeles, CA 90071-3480
Facsimile: (213) 625-1600

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on October 3, 2006, at San Francisco, California.



TYLER DOERR
Legal Assistant